

**SCHIFFRIN BARROWAY
TOPAZ & KESSLER, LLP**

Alan R. Plutzik, Of Counsel (Bar No. 077785)
L. Timothy Fisher, Of Counsel (Bar No. 191626)
2125 Oak Grove Road, Suite 120
Walnut Creek, California 94589
Telephone: (925) 945-0770
Facsimile: (925) 945-8792

-and-

Eric L. Zagar
Robin Winchester
Nichole Browning
J. Daniel Albert
280 King of Prussia Road
Radnor, PA 19087
Telephone: (610) 667-7706
Facsimile: (610) 667-7056

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION**

RALPH D. WILDER, Derivatively on
Behalf of SONIC SOLUTIONS, INC.

Plaintiff,

v.

ROBERT J. DORIS, MARY C. SAUER,
JAMES A. MOORER, MICHAEL C.
CHILD, ROBERT M. GREBER, PETER J.
MARGUGLIO, R. WARREN LANGLEY,
A. CLAY LEIGHTON, KIRK PAULSEN,
MICHAEL J. COSTELLO and
CHRISTOPHER A. KRYZAN,

Defendants,

and

SONIC SOLUTIONS, INC.

Nominal Defendant.

Case No. C 07-01500 CW

**REPLY IN SUPPORT OF
PLAINTIFFS ANDREW
WALTER AND JAMES
FORSETH'S MOTION TO
CONSOLIDATE CASES AND
TO APPOINT LEAD
PLAINTIFFS AND LEAD
COUNSEL**

Date: August 2, 2007

Time: 2:00 p.m.

Before: Hon. Claudia Wilken

REPLY IN SUPPORT OF PLAINTIFFS ANDREW WALTER AND JAMES FORSETH'S MOTION
TO CONSOLIDATE CASES AND TO APPOINT LEAD PLAINTIFFS AND LEAD COUNSEL,
AND IN OPPOSITION TO THE MOTION OF SAMMY K. DOOLITTLE AND RALPH D. WILDER
CASE NO. C 07-01500 CW

1 ANDREW WALTER, Derivatively on
2 Behalf of Nominal Defendant SONIC
SOLUTIONS,

Plaintiff,

v.

4 ROBERT J. DORIS, MARY C. SAUER,
5 JAMES A. MOORER, MICHAEL C.
6 CHILD, ROBERT M. GREBER, PETER J.
MARGUGLIO, R. WARREN LANGLEY,
7 A. CLAY LEIGHTON, KIRK PAULSEN,
MICHAEL J. COSTELLO and
CHRISTOPHER A. KRYZAN,

Defendants,

9 and

10 SONIC SOLUTIONS,

11 Nominal Defendant.

Case No. C 07-02344 CW

12
13 JAMES FORSETH, Derivatively on
Behalf of Nominal Defendant SONIC
SOLUTIONS,

Plaintiff,

v.

16 ROBERT J. DORIS, MARY C. SAUER,
JAMES A. MOORER, MICHAEL C.
17 CHILD, ROBERT M. GREBER, PETER J.
MARGUGLIO, R. WARREN LANGLEY,
18 A. CLAY LEIGHTON, KIRK PAULSEN,
MICHAEL J. COSTELLO and
19 CHRISTOPHER A. KRYZAN,

Defendants,

21 and

22 SONIC SOLUTIONS,

23 Nominal Defendant.

Case No. C 07-03178 CW

24
25
26
27
28
REPLY IN SUPPORT OF PLAINTIFFS ANDREW WALTER AND JAMES FORSETH'S MOTION
TO CONSOLIDATE CASES AND TO APPOINT LEAD PLAINTIFFS AND LEAD COUNSEL,
AND IN OPPOSITION TO THE MOTION OF SAMMY K. DOOLITTLE AND RALPH D. WILDER
CASE NO C 07-01500 CW

1 SAMMY K. DOOLITTLE, Derivatively on
2 Behalf of Nominal Defendant SONIC
SOLUTIONS,

Plaintiff,

v.

4 ROBERT J. DORIS, DAVID C. HABIGER, MARY
5 C. SAUER, A. CLAY LEIGHTON, MARK ELY,
6 ROBERT M. GREBER, PETER J. MARGUGLIO,
and R. WARREN LANGLEY,

Defendants,

and

9 SONIC SOLUTIONS,

10 Nominal Defendant.

Case No. C 07-03361 BZ

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
REPLY IN SUPPORT OF PLAINTIFFS ANDREW WALTER AND JAMES FORSETH'S MOTION
TO CONSOLIDATE CASES AND TO APPOINT LEAD PLAINTIFFS AND LEAD COUNSEL,
AND IN OPPOSITION TO THE MOTION OF SAMMY K. DOOLITTLE AND RALPH D. WILDER
CASE NO C 07-01500 CW

Derivative plaintiffs Andrew Walter ("Walter") and James Forseth ("Forseth") respectfully submit this reply memorandum of law in further support of their motion to consolidate the related actions and appoint themselves as Lead Plaintiffs and approve their selection of Lead Counsel (the "Motion"), and in reply to the opposition filed by plaintiffs Sammy K. Doolittle ("Doolittle") and Ralph D. Wilder ("Wilder").

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

There are currently four derivative actions brought on behalf of Nominal Defendant Sonic Solutions, Inc. ("Sonic" or the "Company"), all of which arise from the same or substantially the same facts and involve the same or substantially the same defendants. Within a few weeks of one another, plaintiffs Walter and Wilder filed complaints on behalf of Sonic, and shortly thereafter plaintiffs Forseth and Doolittle filed similar complaints on behalf of Sonic. The majority of the causes of action in the competing movants' complaints arise out of defendants' conduct of authorizing the backdating of stock option grants to Sonic's top executives at the expense of Sonic and its shareholders. However, Forseth's complaint also includes a unique allegation pursuant to California Corporations Code § 600(c) for the Company's Board of Directors' failure to hold a statutorily required shareholder meeting within the requisite time period, which is not found in Doolittle's or Wilder's complaints. *See* Opposition to Sammy K. Doolittle and Ralph D. Wilder's Motion, Case 4:07-cv-02344-CW, Document 26, at 5-6 (hereinafter, "Opp.").

The Motion filed by Plaintiffs Walter and Forseth for consolidation of the cases, appointment as Lead Plaintiffs, and for approval of their selection of Lead Counsel, was noticed for hearing on August 2, 2007.¹ Under Local Rule 7-3(a), and under a Notice and Amended

¹ On June 28, 2007 and again on July 3, 2007, plaintiffs Doolittle and Wilder filed a motion of their own to consolidate the related actions, appoint *themselves* Lead Plaintiffs and approve their selection of Lead Counsel, the hearing for which was also noticed for August 2, 2007. Plaintiffs Walter and Forseth timely opposed the Doolittle/Wilder motion on July 12,

1 Notice issued by the Clerk of the Court on June 13, 2007, plaintiffs Doolittle's and Wilder's
2 opposition to the Motion was due on July 12, 2007. However, Plaintiffs Doolittle and Wilder
3 failed to file a timely opposition; rather, they filed a late opposition on July 17, 2007. This late
4 opposition should be stricken; thus, Doolittle and Wilder have waived their opposition to
5 plaintiffs Walter's and Forseth's Motion. As the Motion is unopposed, Plaintiffs Walter and
6 Forseth renew their request that the Court appoint them as Lead Plaintiffs and their selected
7 counsel, Schiffrin Barroway Topaz & Kessler, LLP ("Schiffrin Barroway"), as Lead Counsel.
8 Regardless, should the Court accept Doolittle's and Wilder's tardy opposition, Walter's and
9 Forseth's Motion should nevertheless be granted.

10 **II. BACKGROUND**

11 On May 10, 2007, plaintiff Walter filed a motion to consolidate the case of *Walter v.*
12 *Doris et al.*, No. C-07-2344-MEJ (the "*Walter Action*") – with the related case of *Wilder v. Doris*
13 *et al.*, No. C-07-1500-MEJ (the "*Wilder Action*"), and to seek appointment as Lead Plaintiff and
14 approval of his counsel, Schiffrin Barroway, as Lead Counsel (the "Initial Motion"). Walter
15 noticed the Initial Motion for hearing before Magistrate Judge Maria-Elena James, to whom both
16 actions were assigned, on July 21, 2007. Following Defendants' declination to proceed before
17 the Magistrate Judge, the cases were reassigned to this Court, and Walter's hearing on the Initial
18 Motion was re-noticed for August 2, 2007. On July 10, 2007, plaintiffs Walter and Forseth
19 amended their moving papers to include the recently related actions filed by Forseth and
20 Doolittle in the consolidation, but did not change the substantive relief sought in the Initial
21 Motion. Moreover, the amended motion did not change the hearing date, which remained set for
22 August 2, 2007.

23 Under Northern District Local Rule 7-3(a), and under the Notice and Amended Notice
24 issued by the Clerk of the Court on June 13, 2007, Doolittle and Wilder were required to file an
25 opposition to Walter's and Forseth's Motion on or before July 12, 2007. However, they did not
26

27
28 2007.

REPLY IN SUPPORT OF PLAINTIFS ANDREW WALTER AND JAMES FORSETH'S MOTION
TO CONSOLIDATE CASES AND TO APPOINT LEAD PLAINTIFFS AND LEAD COUNSEL,
AND IN OPPOSITION TO THE MOTION OF SAMMY K. DOOLITTLE AND RALPH D. WILDER
CASE NO C 07-01500 CW

1 meet that deadline. Instead, Doolittle and Wilder eventually filed their opposition on July 17,
2 2007, just two days prior to Walter's and Forseth's required reply date, and less than the twenty-
3 one (21) days prior to the hearing on the Motion that the Local Rules require.

4 **II. ARGUMENT**

5 Doolittle's and Wilder's failure to timely respond to the Motion constitutes a waiver. As
6 such, the Court should grant Walter's and Forseth's motion to consolidate the cases, appoint
7 them as Lead Plaintiffs and Schiffrin Barroway as Lead Counsel. Moreover, plaintiffs
8 Doolittle's and Wilder's failure to timely respond to Walter's and Forseth's Motion demonstrates
9 a lack of vigor in the prosecution of this action against Defendants, thereby bolstering Walter's
10 and Forseth's Motion for their appointment as Lead Plaintiffs, and Schiffrin Barroway as Lead
11 Counsel. Moreover, Walter's and Forseth's unique allegation regarding Sonic's failure to hold
12 an annual shareholder meeting demonstrates the superiority of their pleadings and their
13 dedication to vigorously prosecute defendants for *all* violations of law that have caused injury to
14 Sonic and its shareholders.

15 In light of the foregoing, Walter and Forseth respectfully request that this Court appoint
16 them as sole Lead Plaintiffs and Schiffrin Barroway as sole Lead Counsel. Walter's and
17 Forseth's pleadings are superior to those of Doolittle and Wilder, and Schiffrin Barroway is well-
18 versed in prosecuting derivative actions in California and throughout the country. *See* Motion at
19 5-7. Furthermore, Schiffrin Barroway has established itself as a leader in prosecuting options
20 backdating cases, seeking not only to hold the directors and officers responsible for their past
21 misconduct, but also to ensure that proper corporate governance reform is instituted so that these
22 practices are finally eliminated. *See id.*

23 Moreover, though counsel for Doolittle and Wilder suggests that their San Francisco-
24 based counsel are best positioned to lead this action simply because of their location, such a
25 suggestion ignores the numerous successful results Schiffrin Barroway has achieved in
26 prosecuting derivative, securities fraud and corporate fiduciary-related litigation in California
27

1 and throughout the country. Regardless, even if the Court were to countenance Doolittle's and
2 Wilder's "California Counsel" argument – which it should not – Lerach Coughlin has no
3 advantage over Schiffrin Barroway, which opened an office in Northern California in January
4 2007. *See Opp.* at 6. Thus, for all the foregoing reasons, this Court should grant Walter's and
5 Forseth's motion to consolidate the related actions, appoint themselves as Lead Plaintiffs and
6 appoint Schiffrin Barroway as Lead Counsel.

7
8 Dated: July 19, 2007

Respectfully Submitted,

9 **SCHIFFRIN BARROWAY**
10 **TOPAZ & KESSLER, LLP**

11 /s/ Alan R. Plutzik

12 Alan R. Plutzik, Of Counsel (Bar No. 077785)
13 L. Timothy Fisher, Of Counsel (Bar No. 191626)
14 2125 Oak Grove Road, Suite 120
15 Walnut Creek, California 94598
16 Telephone: (925) 945-0770
17 Facsimile: (925) 945-8792

18 -and-

19 Eric L. Zagar
20 Robin Winchester
21 Nichole Browning
22 J. Daniel Albert
23 280 King of Prussia Road
24 Radnor, PA 19087
25 Telephone: (610) 667-7706
26 Facsimile: (610) 667-7056

27 *Counsel for Plaintiffs Andrew Walter and James*
28 *Forseth and [Proposed] Lead Counsel*